NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Advanced Fire Technology, LLC and Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 7—CA-46847

April 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon charges filed by the Union on November 14 and 21, 2003, and January 5 and February 24, 2004, the General Counsel issued the complaint on February 27, 2004, against Advanced Fire Technology, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent filed an answer to the complaint. On March 18, 2004, however, the Respondent withdrew its answer.

On March 29, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On April 1, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by March 12, 2004, all the allegations in the complaint would be considered admitted. Although the Respondent filed an answer to the complaint, it subsequently withdrew its answer. The withdrawal of an answer has the same effect as a failure

The document issued by the General Counsel on February 27, 2004, was entitled, "Complaint, Report on Challenged Ballots and Objections, Order Consolidating Unfair Labor Practice and Representation Cases, and Notice of Consolidated Hearing." An Order Severing Cases and Postponing Objections Hearing was issued on March 19,

to file an answer, i.e., the allegations in the complaint must be considered to be true.²

Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following FINDINGS OF FACT

I. JURISDICTION

At all material times since October 2003, the Respondent, a corporation with an office and place of business located at 2582 Ramblewood Drive, Kalamazoo, Michigan, has been a construction contractor engaged in the installation, maintenance, and repair of fire protection systems. Prior to October 2003, the Respondent's facility was located at 508 Harrison, Kalamazoo, Michigan.

During calendar year 2003, the Respondent purchased and received at its facility and at construction sites in the State of Michigan materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL—CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Phillips has been the Respondent's president and a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, through its agent John Phillips, on or about the dates and at the locations set forth below, engaged in the following conduct:

2004.

² See Maislin Transport, 274 NLRB 529 (1985).

Date	Location	Conduct
October 22, 2003	Resondent's facility	Promised employees a greater voice in managing the business in order to discourage support for the union
Between October 22 and November 7, 2003	Respondent's facility	Promised employees that he would improve wages and benefits in order to discourage support for the Union.
December 9, 2003	Phillips' vehicle	Promised employees improved wages and benefits in order to discourage support for the Union, and implied that employees who supported the Union would be laid off or discharged.

The Respondent, on about November 7, 2003, at the Respondent's facility, told employees that they were expected to vote against the Union.

On about November 17, 2003, the Respondent, through its agent John Phillips, at the Emmanuel Fellowship Church jobsite in Oshtemo Township, issued final disciplinary warnings to its employees Lavern Fisk and Jose Garcia.

On about November 24 and November 28, 2003, the Respondent, through its agent John Phillips, reduced gas money payments to its employee Lavern Fisk.

On about November 21, 2003, the Respondent laid off its employee Jose Garcia.

The Respondent engaged in the conduct described above because its employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these and other protected concerted activities.

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by issuing final disciplinary warnings to employees Jose Garcia and Lavern Fisk, reducing gas money payments to Lavern Fisk, and laying off Jose Garcia, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off employee Jose Garcia, we shall

order the Respondent to offer him full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We also shall order the Respondent to rescind the unlawful final disciplinary warnings issued to Lavern Fisk and Jose Garcia.

In addition, the Respondent shall be required to remove from its files any and all references to the unlawful layoff of Jose Garcia, and to the unlawful final disciplinary warnings issued to Jose Garcia and Lavern Fisk, and to notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

Finally, we shall order the Respondent to rescind its reduction in gas money payments to employee Lavern Fisk, and make Fisk whole for any financial loss he may have suffered as a result of the Respondent's unlawful action, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Advanced Fire Technology, LLC, Kalamazoo, Michigan, its officers, agents, successors, and assigns, shall

- 1 Cease and desist from
- (a) Promising employees a greater voice in managing the business and promising them an improvement in wages and benefits in order to discourage support for Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO.

- (b) Implying that employees who supported the Union would be laid off or discharged.
- (c) Telling employees that they were expected to vote against the Union.
- (d) Issuing final disciplinary warnings to employees in order to discourage support for the Union.
- (e) Reducing gas money payments to employees in order to discourage support for the Union.
- (f) Laying off employees in order to discourage support for the Union.
- (g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer Jose Garcia full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.
- (b) Make whole Jose Garcia for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this Decision.
- (c) Rescind the final disciplinary warnings issued to Jose Garcia and Lavern Fisk.
- (d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful layoff of Jose Garcia and to the unlawful final disciplinary warnings issued to Jose Garcia and Lavern Fisk, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.
- (e) Rescind the reduction in gas money payments to Lavern Fisk, and make him whole for any financial loss he may have suffered from the Respondent's unlawful conduct, with interest, in the manner set forth in the remedy section of this Decision.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in Kalamazoo, Michigan, copies of the at-

tached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 22, 2003.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2004

Robert J. Battista,	Chairman
Dennis P. Walsh,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promise our employees a greater voice in managing the business and promise them an improvement in wages and benefits in order to discourage support for Road Sprinkler Fitters UA Local No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL—CIO.

WE WILL NOT imply that employees who supported the Union would be laid off or discharged.

WE WILL NOT tell our employees that they are expected to vote against the Union.

WE WILL NOT issue final disciplinary warnings to employees in order to discourage support for the Union.

WE WILL NOT reduce gas money payments to employees in order to discourage support for the Union.

WE WILL NOT lay off employees in order to discourage support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's order, offer Jose Garcia full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose Garcia whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL rescind the final disciplinary warnings issued to Jose Garcia and Lavern Fisk.

WE WILL, within 14 days from the date of the Board's order, remove from our files any and all references to the unlawful layoff of Jose Garcia and to the unlawful final disciplinary warnings issued to Jose Garcia and Lavern Fisk, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that our unlawful conduct will not be used against them in any way.

WE WILL reinstate the full gas money payments to Lavern Fisk, and make him whole for any financial loss he may have suffered from our unlawful conduct, with interest.

ADVANCED FIRE TECHNOLOGY, LLC